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VIA FIRST CLASS MAIL AND EMAIL

December 2, 2016

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 10
Office of Ecosystems, Tribal and Public Affairs,
1200 6th Avenue ETPA-124
Seattle, WA 98101
E-mail: r10.foia@epa.gov

Re: Freedom of Information Act Request for Chuitna Coal Mine Documents

Dear Region 10 FOIA Officer:

On behalf of Chuitna Citizens Coalition and Cook Inletkeeper (Chuitna Citizens), Trustees for Alaska requests copies of the following documents, pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

Within 20 working days of your receipt of this letter, please provide me with copies of the following documents in the possession of the U.S. Environmental Protection Agency (EPA):

1. All documents regarding the application or consideration of Sections 404(c) or 404(q) of the CWA to the site of the proposed Chuitna Coal Mine.

The term “documents” should be given the broadest possible interpretation and includes but is not limited to correspondence, memos, notes of meetings and telephone calls, electronic communications, reports, powerpoints, and facsimiles.

In responding to this request, please include relevant documents that are in the possession of any office of the EPA.

If you determine that portions of any of the requested documents are exempt from release, please segregate those portions, identify and describe the withheld portions, specify the applicable exemption, and release the remainder of the document. We encourage you to release any documents that may technically be

shielded by exemptions if there is no purpose served by withholding the requested documents.

We also request a waiver of any fees associated with this request. Under FOIA, “[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l). Pursuant to EPA’s FOIA regulations, fee waivers are decided on a case-by-case basis, and permitted where the disclosure “is in the public interest because its release is likely to contribute significantly to public understanding of the operations or activities of the government,” and the information “is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). In making this determination, the EPA considers six factors. 40 C.F.R. § 2.107(l)(2) & (3).

1. The subject of this request concerns “operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

The requested information will provide meaningful insight into the operations of the EPA. The documents will shed light on the EPA’s process for evaluating coal strip mine projects and are not duplicative of any information currently available to the public.

There is a clear connection between the requested records and Chuitna Citizens’ interest in and desire to inform the public about EPA’s activities related to PacRim’s potential coal mining activity in the Chuitna River and its tributaries. This FOIA request seeks information relevant to PacRim’s permits for activities in Cook Inlet and the review and application of the Clean Water Act Sections 404(c) and 404(q) to the project. The information is not currently available to the public, and Chuitna Citizens intends to use these documents to provide the public with an understanding of PacRim’s project and EPA’s review of the project and anticipated impacts of the proposed mine on the aquatic ecosystem. Thus, the request concerns “operations and activities of the government” and this factor is satisfied.

2. Disclosure of the information is “likely to contribute” to an understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii).

The focus of this request is documents that will significantly inform the public about the proposed project and how it will impact the watershed. This will help the public understand the impacts of the project as a whole and the EPA’s decision-making process. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government’s process and procedure. Thus, the information is “likely to contribute” to an understanding of

both past and potentially future agency decisions and activities and this factor is satisfied.

3. Disclosure of the information will contribute to the “public understanding” of the subject. 40 C.F.R. § 2.107(l)(2)(iii).

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Cook Inletkeeper and Chuitna Citizens are public-interest organizations whose core missions involve protecting the quality of the Cook Inlet environment, public resources, and human health by, among other mechanisms, monitoring government management of public lands and waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The requested documents will undergo scientific and legal scrutiny by Chuitna Citizens to further the goals of protecting water quality in Cook Inlet, ensuring compliance with applicable laws and facilitating meaningful participation by citizens in future permitting decisions.

Chuitna Citizens possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. It is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will significantly contribute to understanding of the subject by the general public and improve its understanding of the proposed Chuitna coal strip mine and impacts associated with the management of water within the mine area. Its staff includes professionals who specialize in public outreach. It will use this expertise to analyze and evaluate the information provided and provide these analyses and evaluations to members and the general public. *Cf. W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004).

Cook Inletkeeper and Chuitna Citizens have a long history of disseminating information similar to that requested here to help inform the public and encourage participation in future planning and permitting processes. They will disseminate the information through various means, including direct-mail letters, newsletters, reports, magazine articles, electronic action alerts, the organizations’ web sites, and through other formal and informal communications. This type of public dissemination is sufficient to warrant a fee waiver. *See* 40 C.F.R. § 2.107(l)(2)(iii); *W. Watersheds Proj.*, 318 F. Supp. 2d at 1041.

4. The disclosure is likely to “significantly” contribute to the public’s understanding of the government’s operations and activities. 40 C.F.R. § 2.107(l)(2)(iv).

The proposed Chuitna coal strip mine is of broad public interest. One major area of concern is the associated impacts of the project on the aquatic ecosystem. The requested documents contribute unknown facts about how the project may impact the aquatic ecosystem and what the EPA considers, with regard to aquatic

ecosystem impact management, when evaluating this project. Thus, the information will “significantly” contribute to the public’s understanding of the subject and this factor is satisfied.

5. The Chuitna Citizens do not have a “commercial interest” that would be furthered by the disclosure. 40 C.F.R. § 2.107(l)(3)(i).

Chuitna Citizens intends to use information and documents obtained through this FOIA request to develop and publicize an understanding of PacRim’s plan of operations for its potential mine site and the EPA’s consideration of those operations.

Cook Inletkeeper and Chuitna Citizens are nonprofit organizations that have no commercial interest in the requested records. *See* 40 C.F.R. § 2.107(l)(3)(i). The materials discussed above, including the publications, websites, comments, and newsletters, are freely available to the public at no cost. Thus, the organizations have no commercial interest that would be furthered by disclosure, and this factor is satisfied.

6. Disclosure is not “primarily” in the commercial interests of the requester. 40 C.F.R. 2.107(l)(3)(ii).

There is no commercial interest in the dissemination of the information either as a primary or secondary interest, and thus, this factor is satisfied.

Based on the foregoing discussion, this fee waiver request meets the FOIA regulation requirements and a fee waiver should be granted. However, if the EPA determines that the fee waiver should not be granted, we request that you contact us prior to incurring any fees completing the FOIA request.

We request that the EPA respond within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed.

Please produce the records described above on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If you have any questions regarding the scope of this request, please do not hesitate to contact me at (907) 433-2007 or by email at blitmans@trustees.org. Thank you for your prompt attention to this request.

Sincerely,



Brian Litmans
Senior Staff Attorney
Trustees for Alaska
blitmans@trustees.org
(907) 433-2007

cc: Carly Weir, Cook Inletkeeper
Judy Heilman, Chuitna Citizens Coalition